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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NEPA PROJECTS & INVESTMENTS LIMITED;

Plaintiff,

- against -

KYODO CORPORATION, KYODO SHIPPING  
LIMITED, and PROGRESS SHIPPING LIMITED,

Defendants.

09 Civ. 5118 (LAK)

ECF CASE

THIRD CONSENT TURN OVER ORDER IN RESPECT OF ATTACHED PROPERTY

Whereas in its Verified Complaint dated June 2, 2009, Plaintiff NEPA PROJECTS & INVESTMENTS LIMITED ("Plaintiff"), has asserted claims against Defendants KYODO CORPORATION ("KC"), KYODO SHIPPING LIMITED ("KSL"), and PROGRESS SHIPPING LIMITED ("PSL") for failure to pay various amounts due and owing to Plaintiff under Agreements dated July 12, 2007, August 18, 2009, July 24, 2007, and February 18, 2009;

Whereas, Plaintiff and KC have agreed that KC shall pay to Plaintiff the sum of \$143,313.04 as partial payment for the Plaintiff's principal claims as set forth in the Verified Complaint (hereinafter "First Partial Payment Agreement");

Whereas, pursuant to the First Partial Payment Agreement, the Court has issued a Consent Turn Over Order in Respect of Attached Property on July 13, 2009 (hereinafter "July 13, 2009 Consent Turn Over Order");

Whereas, Plaintiff and KC have agreed that KC shall pay to Plaintiff the sum of \$23,352.45 as a second partial payment for the Plaintiff's principal claims as set forth in the Verified Complaint (hereinafter "Second Partial Payment Agreement");

Whereas, pursuant to the Second Partial Payment Agreement, the Court has issued a Consent Turn Over Order in Respect of Attached Property on August 27, 2009 (hereinafter "August 27, 2009 Consent Turn Over Order");

Whereas, Plaintiff and KC have agreed that KC shall pay to Plaintiff the sum of JPY 1,278,916.00 (approx. USD \$13,379.70) and USD \$786.00 as a third partial payment for the Plaintiff's principal claims as set forth in the Verified Complaint (hereinafter "Third Partial Payment Agreement");

Whereas, Plaintiff agrees to reduce the Ex Parte Order to reflect the payments made, pursuant to the First Partial Payment Agreement, Second Partial Payment Agreement, and Third Partial Payment Agreement upon:

- (1) receipt of all funds subject to the July 13, 2009 Consent Turn Over Order to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon; and
- (2) receipt of all funds subject to the August 28, 2009 Consent Turn Over Order to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon; and
- (2) receipt of JPY 1,278,916.00 (approx. \$13,379.70) and USD \$786.00 of funds under attachment at Citibank and Bank of New York Mellon subject to this Consent Turn Over Order to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon;

Whereas, pursuant to Supplemental Admiralty Rule B of the Federal Rules of Civil Procedure, on or about June 4, 2009 Plaintiff obtained from the Court an Ex-Parte Order of Maritime Attachment together with Process of Maritime Attachment and Garnishment that

authorized the attachment of Defendants' property within the Southern District of New York in an amount up to \$274,264.97;

Whereas, Citibank, as garnishee and acting pursuant to the Ex-Parte Order and accompanying Writ of Maritime Attachment and Garnishment, has currently restrained and attached KC's property in the approximate amounts of, including but not limited to, JPY 98,296.00 (approximately \$1,027.00), JPY 238,200.00 (approximately \$2,490.14), JPY 49,680.00 (approximately \$529.92), and JPY 892,740.00 (approximately \$9,332.70);

Whereas, Bank of New York Mellon, as garnishee and acting pursuant to the Ex-Parte Order and accompanying Writ of Maritime Attachment and Garnishment, has currently restrained and attached KC's property in the approximate amount of \$786.00;

Whereas, the Plaintiff and KC agree that it should fund the Third Partial Payment Agreement out of the total amount owed for Plaintiff's claims from the JPY 1,278,916.00 (approx. \$13,379.70) and USD \$786.00 that is currently under attachment at Citibank and Bank of New York Mellon respectively;

Whereas, the Plaintiff and KC have agreed that JPY 1,278,916.00 (approx. \$13,379.70) and USD \$786.00 of the attached funds should be wired via electronic funds transfer by garnishees Citibank and Bank of New York Mellon to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon;

**WHEREBY, IT IS HEREBY:**

**ORDERED**, that garnishee Citibank shall effect electronic funds transfers in favor of Plaintiff in the approximate amounts of JPY 98,296.00 (approximately \$1,027.00), JPY 238,200.00 (approximately \$2,490.14), JPY 49,680.00 (approximately \$529.92), and JPY 892,740.00 (approximately \$9,332.70) which amount shall be deducted from KC's property that

garnishee Citibank currently holds under attachment and shall pay this amount to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon;

ORDERED, that garnishee Bank of New York Mellon shall effect electronic funds transfers in favor of Plaintiff in the approximate amount of \$786.00 which amount shall be deducted from KC's property that garnishee Bank of New York Mellon currently holds under attachment and shall pay this amount to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon;

ORDERED, that any bank fees associated with the transferring of settlement funds to the Plaintiff's specified account shall not be deducted from the transferred funds;

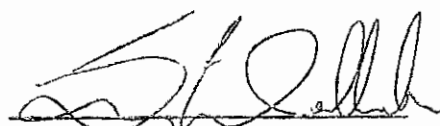
ORDERED, that the payments from KC shall not be subject to any attachment in New York after those funds are released by garnishee(s) Citibank and Bank of New York Mellon en route to Plaintiff's designated account;

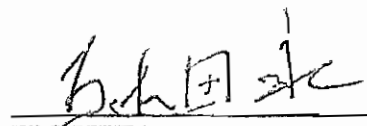
ORDERED, that Plaintiff agrees to reduce the Ex Parte Order to reflect the payments made pursuant to the First Partial Payment Agreement, Second Partial Payment Agreement, and Third Partial Payment Agreement upon:

- (1) receipt of all funds subject to the July 13, 2009 Consent Turn Over Order to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon; and
- (2) receipt of all funds subject to the August 28, 2009 Consent Turn Over Order to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon; and

(2) receipt of the JPY 1,278,916.00 (approx. \$13,379.70) and USD \$786.00 of funds under attachment at Citibank and Bank of New York Mellon subject to this Consent Turn Over Order to Plaintiff's account pursuant to instructions to be provided by Plaintiff's counsel, Lennon, Murphy & Lennon;

Dated: November 4, 2009

  
Patrick F. Lennon, Esq.  
Anne C. LeVasseur, Esq.  
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SO ORDERED

  
Lewis A. Kaplan, U.S.D.J.

11/13/09